

Region IV

Southeastern States

Regulatory Enforcement Fairness Hearing

Orlando, Florida

January 28, 2002

## P R O C E E D I N G S

**MS. KRESS:** Hi, we're going to go ahead and get started here, if you all would like to have a seat. My name is Lola Kress. I'm the Public Affairs Specialist in the SBA North Florida District Office.

I just started with that office and it's been such a treat to help bring this together. It's been great talking to a lot of you over the phone and getting to know you, and even better seeing you in person.

Just wanted to let you know a little logistics. Restrooms are right down the hall to the right around the corner. And I want to go through a little bit of the logistics for the day.

The hearing will start right after I finish up here. And after the hearing runs from 9:00 to 12:00, there's going to be a box lunch and you'll have an opportunity to pay for it.

Sorry we couldn't cover the cost but you'll be able to pay at the registration tables right outside. Just make the check out to them and you're more than welcome to join us. It will be a good opportunity to network, speak with the Ombudsman, and it's a really good opportunity for you. Hopefully you can join that.

And then afterwards at 1:00 o'clock if you wish to stay for the workshop from the Department of Labor, you'll need to re-register at 1:00 o'clock, just briefly if you don't mind, probably at the same registration table. And the workshop will run from 1:30 until 4:00. So if you're interested in that I still have space if you'd like to stay.

Now I'd like to give it over to Wilfredo Gonzalez. He's the District Director from the North Florida District office.

**MR. GONZALEZ:** Thank you, Lola. Good morning, Buenos Dias. As Lola said, I'm the District Director for the North Florida District Office. We cover 43 counties from Orange County north. We're situated in Jacksonville.

Some of the staff that're here today. Lola just introduced herself. She is our Public Information Officer. And the lady with the camera going around is Nancy Collazo, who is an Economic Development Specialist.

It gives me great pleasure to have you here in Orlando and to make this city and this district available to our Ombudsman from Headquarters.

I'd like to recognize some other folks that are here. Roberto is a staff person working with the South Florida District Office and at present

Roberto is in St. Petersburg on his way to relocate to Tampa.

And also I'd like to recognize Paul Hsu. Dr. Paul Hsu who is the CEO and President of Manufacturing Technology, Inc., in Fort Walton Beach, is on the National Advisory Council for the SBA.

At this time also I'd like to recognize some of the folks that are here that have blessed us with their presence as a way of indicating and underlining the importance of today's meeting.

I'd like to recognize Pamela Dana, Dr. Pamela Dana, and just say a little bit about her. Pamela serves as Director of the Governor's Office Of Tourism, Trade, and Economic Development, where she is responsible for the development and implementation of trade and investment policies and programs, leading to economic industry growth in Florida.

As Director, she also maintains oversight of the public/private partnerships of the Commission on Tourism, Visit Florida, Enterprise Florida, Inc., Florida Sports Foundation, Space Authority, the Black Business Investment Board, and the Florida Film Commission.

Prior to joining the Bush Administration, Dana served as Assistant Secretary and Acting Deputy Secretary for Economic Development at the California Trade and Commerce Agency.

A native Californian, Dana holds a PhD in International Development in Economics from the University of Southern California, Masters in Administration Planning and Policy from Harvard, and a Bachelor's in Sociology Social Work from the California State University in Chico. Please help me welcome Pamela Dana.

(Applause).

I also would like to recognize Elsa Bishop. Is Elsa here? Elsa Bishop is Florida's Small Business Ombudsman, which is a Bishop person. (Laughter) We need to be politically correct these days.

The Environmental Administrator of the Office of Air Programs, Communication and Outreach in the Florida Department of Environmental Protection's Division of Air Research Management and the Division's media liaison.

As such, she's responsible for the Small Business Assistance Program Outreach, internal and external communication, environmental education, pollution prevention and the Partnership for ECO System Protection.

Prior to joining, Elsa was the manager of Air Committee Programs for the Environmental Affairs of Florida Power and Light. Elsa has 20 years experience in the Environmental field. She has a Bachelor's of Science degree in Business Management from Barry University in Miami Florida.

Thank you Elsa for being here. And at this time I'd like to introduce our National Ombudsman, Michael Barrera. For you Anglos it's Barrera. (Laughter) I remember when someone asked me, who's your new administrator, I say, well to us it's Hector, and to you it's Hector.

(Laughter)

President George Bush appointed Michael Barrera as the National Ombudsman for the U.S. Small Business Administration on August 24, 2002. Mr. Barrera leads the national effort on behalf of the country's small business to insure fairness in the enforcement of federal regulations.

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act. The legislation empowers the National Ombudsman to receive and substantiate a report to Congress, complaints and comments from small business owners regarding regulatory enforcement by federal agencies.

Mr. Barrera received his law degree from the University of Texas School of Law in 1989. (Laughter) And a Bachelor's Degree in 1982. And he's a member of the Missouri Bar Association, Kansas City Metropolitan Bar Association, and the Hispanic Bar Association. He is also a member of the Texas Bar Association.

In private practice he co-founded two law firms in Kansas City, focusing on general civil litigations, small business start-ups, worker's compensation and criminal defense and personal injury.

Prior to studying law, Mr. Barrera was marketing representative for the Miller Brewing Company from 1982 to 1984 in Atlanta Georgia. The beer truck outside is his. (Laughter)

In addition to running two law firms, Mr. Barrera's small business experience includes the management of two family owned restaurants in the Kansas City area. So he's certainly someone that knows small business all his life.

He's formerly a President of the Hispanic Chamber of Commerce of Greater Kansas City and under Mr. Barrera's leadership, the Chamber's membership grew 600 percent.

Mr. Barrera's history of involvement in the community and his professional background includes completion of Centurion Leadership Program. And I don't have this here, but he was recently selected to the Board of Trustees of the Kansas State University Foundation and was selected to 2001 Federal Bureau of Investigation's Citizen Academy.

And what is not written but what I can tell you about Mr. Barrera, is that he comes highly recommended. He is following the mandates set by the President, which is to listen to small businesses and find out what is it that inhibits them from conducting their business in a fair way, to take

that information down and to present it in a way in which legislation can perhaps address some of those issues. Without further ado, Michael Barrera.

(Applause)

**MR. BARRERA:** I would like to thank everyone for coming here this morning. When I first got here, I saw a couple of chairs in there, I go, am I that ugly? No one's coming this morning.

But this is an incredible turnout, and on behalf of Administrator Barreto, and it is Barreto, Barrera. The only difference is, Barrera comes first in the phone book. (Laughter). But he told me, not in the SBA phone book, (Laughter) so he isn't shy about reminding me of that.

But I can't tell you how pleased I am to be. I'm really impressed by how many guests that we have, from both the state, and your Congressman and your Senator.

That's how important this particular program is to small businesses because I think everyone realizes how important small business is to America.

I think 9-11 really reflected that, because small business was hurt tremendously on that. And we found out that a lot of the corporations that were also hurt have been losing people, and those people are going to become small businesses.

So it's important that small businesses remain strong. It really is the backbone of our economy. It is who we are. If you think about a small business, I always compare it to breathing.

You can't go a day without running into a small business whether it be a cab driver, your cleaners, you go in the grocery store.

Small business is part of our lives and if you look at it, small businesses are the leaders of our community. Any Chamber of Commerce or anything like that, it's usually a small businessperson that's in charge. Any time there's a volunteer organization, a small business person is in charge.

And the President recognized that. He recognized -- and if you think about it, the President himself is a small businessman. Small business is important to him and he showed that by appointing a small businessman to lead the SBA.

Hector Barreto has been a small businessman all his life. His father was one of the founders of the Hispanic Chamber of Commerce in (Inaudible). So he lived and breathed small business.

And it's been kind of his mandate to us that this isn't complicated. What small business needs is more business. And with that in mind, he wants us to figure out how to help and get more business, or how to help keep them from being detracted from getting more business.

But I kind of want to introduce you to more people that are very important to me. Under SBREFA, we've been asked to go out across the country and find out what are some of the issues facing small businesses when they have to deal with federal agencies and enforcement actions.

But what's been important for us is that we also have 50 small businesses on a National Regulatory Fairness Board, and these small businesspersons are very, very important. They're out there everyday working their small businesses and they interact with small business all the time. And it's important that we get that feedback from them.

And we have a couple of them here today and they're not just from Florida, they flew in from their small businesses to be here. I want to introduce them to you briefly.

One is Bobby Clark, and Bobby is out of Kentucky and in fact I've got his file here. Bobby is one of the original Regulatory Fairness Board members. Bobby is founder and CEO of Clark Publishing, Inc., and is a graduate of the University of Kentucky. He's a Wildcat, with a Bachelor's degree in Business Administration and a Masters degree in Public Administration.

In September of '94, Bobby was one of 16 elected from Kentucky to serve on the White House Conference on Small Business, and was Chairman of Kentucky's Information Technology Issues Committee. After the White House Conference, Congress passed SBREFA and the creation of the Regulatory Fairness Boards.

Now what's good about Bobby is that in May of 2001, he was appointed Chairman of the new Commission on Small Business Advocacy. And what this is, there's only three states in the country that basically have similar SBREFA type legislation. Kentucky, Maine, and Hawaii.

I've been up to Maine, I've been to Kentucky, and I'm going to have to go Hawaii to see how their program is going. But Bobby, we really appreciate your being here and volunteering your time and coming from Kentucky.

We also have Ms. Livia Whisenhunt. Am I saying that correctly? Okay. She's President, and CEO and founder of PS Energy Group, and has over 20 years experience in purchasing and marketing of natural gas and fields.

PS Energy is one of the first companies to market gas behind the

Atlanta Gas Light System when deregulation of the city occurred.

In 1996, Ms. Whisenhunt was appointed by the Lieutenant Governor of the state of Georgia, to the House for Competitive Natural Gas Committee, established to study and make recommendations regarding the deregulation of the natural gas distribution system in the state.

In July of 1999, she was appointed to the Southeastern Region Federal Regulatory Fairness Board to represent small business in the Georgia area and in this whole region. She was later appointed as currently the Region Board Chairperson. We're glad to have her down here.

But before I finish that one, I also want to introduce Thelma Ablan. Thelma was one of my Regulatory Fairness Board members in Illinois. And she and her husband Ricky moved down here to Sarasota, so you have another good friend down here.

And I want to thank her for coming down here on her own time and money to be here with us. And we appreciate all their efforts. And we thank you for being here.

Also I have a couple more people. And I don't want to make this an introduction party because we need to get to the meaning of why we're here.

But I have Kaaren Street. She's the Associate Administrator Deputy of the Development Program for the SBA. And this is very important. When people think of the SBA without defining, they think either loans or procurement.

And the SBA is so much more than people really realize. We have some of the best training programs around and it's really important that a small business take advantage of that. So I like to let people know that we would give you all a full scholarship to Harvard and give you your books, but if you don't go to class, it's not going to do you any good. And that's why the SBA has created a tremendous training program.

And Kaaren, you want to say a couple of words. I'm going to have her -- it's going to help you with what you're doing.

**MS. STREET:** Good morning, and again on behalf of our Administrator Hector Barreto, I would like to welcome you to this hearing this morning.

I can't tell you how important this is for all of us at SBA, as well as the small businesses all over the country who need to hear from you in terms of all the issues that could be impacting the growth of small businesses in our nation.

I'd also like to just kind of give you a brief overview of SBA and

how it operates. Many of you probably know that we're pretty much structured into four functional areas.

One is advocacy, right at the top. And Hector thinks and believes and the rest of us as well, that that is a very important component, to advocate for small businesses.

Our Ombudsman Hearing is collecting information from you out here in the audience, as well as small businesses from all over the country.

Another aspect of our -- the way we're structured is capital access in terms of financing for small businesses and everything for capitalization of a business.

And then third is our access to opportunity in terms of government contracting in the federal sector.

And then finally the fourth area is Entrepreneurial Development, which is the area that I'm the Associate Deputy Administrator for.

And that is pretty much all of the development programs, all of our grant programs, all of our assistance, be it online, which we have a tremendous website that provides online technical assistance, classroom training for businesses, as well as working through our variety of partnerships -- partners out there.

We have Small Business Development Centers that I think I have one of our Assistant Directors here. Stand and let everybody see you here -- who manages -- works for Jerry Cartwright, who is our State Director for the state of Florida.

We also have SCORE, which is the core of retired executives, which is a 11,000 almost 12,000 person organization that goes out and helps businesses, which is very important that you spread the word about us, and they're really a fabulous resource for us.

And we have our Tribal Business Information Centers that we have, our Tribal Reservation of the Nation, and we have our Business Information Systems -- Business Information Centers where you can get all kinds of information regarding how to start a business, how to expand a business, how to sell a business, how to buy a business, anything that you want to know about developing your entrepreneurial skills.

So those are -- we have all sorts of things --(inaudible) would kill me -- my Assistant Administrator who handles our Office of Women's Business Ownership, which is something we're very proud of.

We have 86 centers around the nation that focuses on women's' business development in every capacity, international trade, all aspects of that as well.



So the educational component is an area that we impact almost 1.7 million businesses per year -- avail themselves to our services. So your being here today, helping us help them is very important. And again, thank you for coming and I look forward to hearing your comments today. Thank you. (Applause)

**MR. BARRERA:** Finally, I want to introduce some people from your Congressional representatives of the state of Florida. We have Marcie Randolph and Nancy Cackey, from Senator Bill Nelson's staff. I'd like you to stand up and be recognized. (Applause)

**SPEAKER:** (Off mike, inaudible) -- and so it is our pleasure to be here. Thank you all.

**MR. BARRERA:** Thank you. We have Mike Harrison from Senator Bob Graham. Mike, please stand. We have Bernita Sanders and Chester Glover from Congresswoman Corrine Brown here today. They said they were going to try to make it a little later on.

And we have some federal agencies here. And these are really important because the federal agencies need to hear from you.

And what we've done this year that I think has been really important, is that we didn't want to make this necessarily an adversarial relationship with the SBA.

We thought it was important in enrolling these federal agencies to become partners, so they can come here and listen to what some of your comments are because it's important that they hear what's happening.

I think what we found out and I think they'll tell you the same thing, is that a lot of the federal agencies don't necessarily want to hurt small business. I think that's true of the ones up in D.C.

But I think what happened is that in any type of organization that we have something run by humans, it's not going to be perfect. And what happened is that there's going to be some rogue agents out there that may not be following what D.C. wants them to be doing.

So it's important that these federal agencies from Washington D.C. come out and listen to what you have to say. And that way they can kind of find out what's going on and take it back, and what it's done is, we have to make some positive changes.

So I would like the agencies to stand and introduce themselves. I see one of my friends out there, Tom Hicks from the Department of Labor.

**MR. HICKS:** I'm Tom Hicks from the U.S. Department of Labor in Washington D.C. in the Office of Small Business Programs. We'll be conducting a seminar at 1:30 today.

**MR. BARRERA:** And that seminar's great because what they do is -- the Department of Labor is huge. They have OSHA, the Wage and Hour, and what they do is they're going to have the seminars help small businesses learn how to comply.

Because what we found is that small business, they'll get a stack of papers and they see all these regulations and they go, oh, my God. And that's the hardest thing, for small business to get all this paperwork.

And there are ways; there is compliance assistance out there to help you to get to the problem without having to get your lawyers. I'm not trying to put lawyers out of business. I was one. To give lawyers because -- opportunity to take the time to comply. We recognize all that. We also have Mr. Mercado from the IRS.

**MR. MERCADO:** Hi, I'm Wayne Mercado with the Internal Revenue Service and the Small Business Self-Employment Division from Washington D.C. And we also have some local folks here if you don't mind, if they introduce themselves.

**MR. CREWS:** I'm Craig Crews, I'm in Tax for Education Communication area in the Internal Revenue Service in Jacksonville, Florida.

**MR. MERCADO:** We have Joan Bets from OSHA.

**MS. CHAPPELL:** My name is Gayle Chappell and I am the local Tax (inaudible) for the North Florida area.

**MR. MERCADO:** Anyone from OSHA here, okay?

**MS. BETS:** Joan Bets, with OSHA.

**SPEAKER:** Director of OSHA Florida.

**MR. BARRERA:** Anyone with the U.S. Coast Guard? Okay. Anybody with the Army Corps of Engineers? How about Annette Hill from the EPA or anybody from the EPA? Okay.

Well, also as I finalize introductions, as an attorney I need my attorney, and I need someone to keep me out of trouble. And I have Veronica Miranda here with our office and she's going to be kind of -- if I get off line, she'll tell me to shut up. (Laughter) Everyone needs someone like that.

Now we have a presentation. I just want to tell you about the SBREFA program. Kind of let you know what we do and then just to confirm what we don't do. And I think it's very important.

So if you'll operate the Power Point. It's coming in now. I'm the

last person to operate computers. Can you all hear me if I talk a little way from the mike? Okay.

**SPEAKER:** Just let me interject for a second because I forgot to introduce Dwight Reynolds. Dwight was the District Director in Detroit for the SBA, and the Deputy in Atlanta, and now he's with the city of St. Petersburg.

**MR. BARRERA:** I definitely want to introduce Kristi Clemens. Her office is with the Department of Entrepreneurial Development and she's Kaaren's special assistant and she keeps Kaaren out of trouble. (Laughter) So of course she's important.

We have some folks who are going to testify about how federal regulations have affected them. And do we have anybody who wants to volunteer to be first? Come on up, sir.

And what we need is that you state your name loudly. And we have kind of a housekeeping thing. We're letting everybody have five to ten minutes because we have like five or six people wanting to testify and we want to be sure and give them plenty of time.

**SPEAKER:** Good morning. My name is (inaudible). First I want to congratulate you Mr. Barrera on your appointment as the National Ombudsman (inaudible).

Due to time constraints I've decided to bring only four issues forward for your suggestion and your kind attention. (Inaudible). Issue number one, violation of the spirit of Section 8(a) by contracting officers.

Facts, historically the procurement was offered to a (inaudible) company. It could not be pulled out (inaudible) from SBA.

But recently that has changed at least in practice. During the past five years the contracting officers have opened (inaudible) procurements (inaudible) despite the excellent performance (inaudible) company.

Furthermore, it says if the supplies or services supplied are found unsatisfactory (inaudible) requires non-contracting officers to submit (inaudible) to the SBA 30 days in advance. (Inaudible).

Such actions by the contracting officer not only violate the spirit of Section 8(a), but circumvent the (inaudible) by changing the rules of the game. (Inaudible).

Issue two, bundling of contracts continues. Facts, the practice of bundling of contracts continues to the detriment of small businesses (inaudible).

I also understand that there exists an executive order discouraging federal agencies to engage in the practice of bundling of contracts. Yet the contracts are being sought at the national level on an "all or none basis". (Inaudible). Such practices undermine the very (inaudible) of the Small Business Administration.

(Inaudible) has routinely engaged in that practice of bundling (inaudible). We must find a way to support the small business and not allow the practice of bundling to continue.

Issue number three. Facts, it has been brought to my attention that large (inaudible) contracts are being awarded without ample (inaudible) subcontracting.

Recently a 60 million award was made without any participation from the small or minority businesses. Even though the participation of a small business is required, it is circumvented.

Recently a large company was awarded a large mail order pharmacy with a (inaudible). Such actions not only challenge (inaudible) but also (inaudible) designed to protect the small minority businesses.

Issue number 4. Facts, the (inaudible) was designed to help the small minority businesses but contracting officers are inconsistent.

Sometimes it is based on a unit price or (inaudible). Not only that but quite often contracting officers split it into small (inaudible). (Inaudible) \$250,000 award split into 12 smaller procurements (inaudible) threshold.

SBA and (inaudible) were notified about this case (inaudible) but no action was taken to correct this situation. These were the four issues that I wanted to bring (inaudible). Thank you Mr. Barrera for your kind attention to my demands. If there are any questions related to my presentation I will (inaudible).

**MR. BARRERA:** Thank you. I appreciate your remarks. That's why I wish the Power Point was working because but I do want to clarify a couple of things. And these remarks were really good -- is that what SBREFA addresses and what SBREFA doesn't address.

And this is really important for us to bring out what we're here for at SBREFA. We want to hear about comments how the federal regulatory agencies are affecting small business and enforcement actions.

What we don't normally do, and we appreciate hearing -- we're not hear to listen about contracting issues. That is our government contracting office.

SBREFA does not help with small business, and it's not that we don't

care. We are not helping small business to get contracts or we don't necessarily help you get loans.

What SPREFA does is listen to regulatory enforcement issues and it's important that we keep those pretty focused. And we're going to listen to some of these contract issues at the end of all of the SPREFA issues first.

So it's important that we listen to those first, because we have businesses that are being affected by regulations negatively. We need to get those issues beforehand so if we can, we'd like to bring some others up.

We have Bud Lessringer? Bud's not here. How about John Stewart? Okay. John Swift? Joe Durek.

**MR. DUREK:** I'm here.

**MR. BARRERA:** Joe, come on up.

**MR. DUREK:** Thank you. I put some packages on the desk that have some documentation. I'd like to thank everybody for the opportunity to be able to do this. I've got a couple of remarks.

For eight years I took care of my mom and dad and my house. My dad suffered by Alzheimer's and my mom was bedridden. I had around the clock nurses, which would cost over \$30,000 a year.

My salary as a federal auditor provided for everyday needs but was not enough for the around the clock nurses.

In 1993 I started a part time company just to make enough money to keep my mom out of a nursing home. I placed an ad in the University of Central Florida for a marketing graduate and (inaudible) responded.

I paid him \$400 a week and after three weeks I ran out of money and offered him one half of whatever this company would become.

At the time we were in the bedroom of my house, which was our corporate headquarters. (Inaudible) accepted although the future was not assured, and we began the long process of turning a dream into a reality.

We applied for \$100,000 low Doc loan from the SBA for inventory, which was granted. It became the first and only loan that Lentek ever asked for.

That loan gave Lentek, who at the time was a non-profit company not by choice, the seed money to go from a company with two employees and no sales, to a company with 40 employees and over \$25 million in sales in five years.

Lentek was named the fastest growing technology company in Orlando, the fourth fastest in the state of Florida, and the 171st fastest in the United States by Deloitte & Touche' in 2001. We actively sponsored the University of Florida and have worked to be good corporate neighbors.

Over the last 18 months, Lentek has spent over \$125,000 in legal fees attempting to meet the requirements of EPA.

We have been threatened by the Compliance Office of the EPA Region Four and have returned hundreds of thousands of dollars of products to our factory, had products not covered by EPA regulations confiscated and only released after significant legal activity.

Lentek has become the victim of bad bureaucrats who concentrate their regulatory activities against small businesses because they believe small businesses will not have the financial resources or emotional fortitude to fight them.

And it's easier to pick on mom and pop businesses then it is to pursue compliance of corporate giants. It is easier to fill a room with bureaucrats with one lone business owner on the other side of the table than to face the army of legal beagles of the corporate giants.

Lentek manufactures a whole line of products from chemical free pest control to air purification. We're licensed (inaudible) from major league baseball for our home shopping.

We're in 26 countries we do a lot of transitions with the government of Brazil, Mexico, Chile, Argentina and we traditionally actively (inaudible) Florida in helping us to grow as well as the SBA helping us grow with loans and advice.

On the 11th of September, an authorized representative of the EPA came to our office and asked to look at products that were covered by (inaudible), which is the Regulatory Act that covers pesticides and insecticides.

She came into our office as a representative of the state of Florida as the EPA's agent here in Florida. We had a meeting with her. She came back on the 15th and 17th of November.

Nine months later we received a letter from EPA in Atlanta, stating that there's some cause to believe that we're violating the regulations and that we had denied access to their representatives, even though we had an hour meeting with them in our conference room. That was one of their allegations.

A couple of weeks after that, I flew up with our attorney to Atlanta to meet with the EPA. At that meeting we asked what was wrong. And their answer was, we don't know why it's wrong, it just is.

We asked them why, what can we do to comply? And they said, it's wrong but we can't tell you how to make it right.

So now we have a lot of the products that we're bringing into this country, that we can't bring in because they won't tell us how to bring it in correctly.

After the meeting, Lentek was threatened with a \$225,000 fine because of labeling issues on a device that is not a pesticide. It emits ultrasonic and electromagnetic frequencies. So it can have no harm to anybody and it's not a pesticide but we were threatened with \$225,000 fine.

At that time, I went back and looked at all the other regulations and all the other fines, most of which are under the \$25,000 category. They were pesticides that are highly toxic and had many, many counts of violations rather than just a couple of (inaudible).

At this particular time we decided, well, let's try to work with the EPA to see if we can come into compliance or at least they could let us know.

At that meeting we were told by the Chief of the EPA up in Atlanta, don't go to Washington, which I took as a threatening comment because Washington is the ultimate source of whether a label is correct or not. And when they sit in a meeting and tell you not to go to Washington, I consider that to be threatening.

I was a federal auditor. I was a government liaison with (inaudible) company. I've worked with the government and I understand the government, so we're not going in there and trying to be arrogant. We're going in there looking for compliance.

Then it started the whole process of trying to get settlement, which is what the government does well sometimes, is try to make it a little bit difficult for you so settlements end up to be a lot harder than they normally would be.

They started holding a product that wasn't even covered by the regulation. One product called Bark Free. It picks up a dog's barking, sends a signal, and keeps the dog from persistent barking.

They claimed that that was covered under the pesticide regulation and held it for a period of time until we had to spend a great deal of money, which you always end of doing to finally get it out of there.

Then what we did, we asked them well, how do we do our label? We keep asking them, you know, how do you do the labeling? Then we have a (inaudible) folder, which you have copies of.

Folks at EPA -- we said, what can we do for labeling and this is her quote, it says, "I have asked several times exactly what is wrong with the packaging and either he doesn't know or won't disclose".

We can't fix the problem if we don't know what it is. I've also received a copy of the reject. It only states a (inaudible) violation. I'm not well versed enough on the legislation to even guess what it means, but it seems vague with other agencies including customs.

I've never had this kind of trouble figuring out what the problem is. Usually it's very clearly stated as to why an item was rejected it. So even our (inaudible) who was trying to work with the EPA, was getting absolutely no assistance.

Then we said let's go ahead and do a settlement. Let's try to find out if we can work with them. And I've got a copy of a voice mail of the EPA attorneys, who you would think would be a little bit -- let's say a little bit less emotional in dealing with these issues.

Sends an e-mail -- these are the transcripts of the e-mail she sends us. I note this is on the 5th of November. "I'm really unhappy about how things are turning out and I'll probably have to settle with you guys. Well, we'll see what happens and I will talk to my people tomorrow morning."

Then she calls back a little bit later and says, "I just wanted to let you know that I'm calling to cancel tomorrow's settlement meeting".

Then she calls back the next day and says, "I just wanted to let you know I'm sorry about the prior voice mail messages and I will check with the people at the EPA to see if they still want to continue with the conference call. I just feel very angry at this point and I don't know if it would be worthwhile to go forward to call".

Then she calls back the very next day and says, "Hi Mark, this is Mechie. I'm so sorry for the voice mail messages I've left you. Anyway, I'm over at OSHA and I'm calling to let you know that Joe Deaver is not here today".

I don't think that the word emotion should be in any kind of voice mail left by an attorney of any agency, whether it's the EPA or anybody else.

This is what the problem is. Everything becomes emotional, everything becomes, well, let's not look at regulations, let's take a look at how we can make sure that this little business can give us whatever they have to afford. Then they hold products of ours for months.

We're asking them for compliance again. I've got some documents there, that we were forced to send back hundreds of thousands of dollars



worth of product.

This is right after the 9-11, when every company is struggling including ourselves, and sending back hundreds of thousands of dollars worth of product to the company -- to our factory, canceling orders from home shopping, canceling orders from BJ. These are all big customers of ours. They don't wait around a lot of times.

You only get them once and you've got to work every single day to keep them and when you have to send back products, deny or cancel orders, they don't appreciate it.

And I've provided documentation of everything we sent back, some of which the government had from the 8th of August and we're sending it back on the 4th of October. Have yet to give us explanation as to what we can do to get them out of customs.

That is two months later, that is entirely too long to be waiting for the government to be taking some sort of action up in Atlanta.

In addition, there was another complaint that we had here, which I don't want to talk about individuals, but it's a problem that the government has.

It's not this particular case, it's not Lentek being hurt, it's agencies against (inaudible) that don't give any explanation as to why they're doing things other than that's the way that it is.

And then when you want to elevate it, they threaten you with, well, now you're going to get a lot of exposure. And people are fearful.

But people have to understand Lentek, the principle ends in an l-e not an a-l. And we'll spend whatever money is necessary to make sure that the legacy of why I started this business is a legacy we live by every single day.

We're got other regions that have let the same product through, the same packaging, other than region four. So the EPA inconsistency with their agency -- so what can a person do?

Governmental powers only borrow from the people and must be returned undamaged. If an agency is arrogant while performing its duties or (inaudible) enforcement methods, it will lose its moral authority.

Without this moral authority, compliance with the law becomes a burden rather than a belief that laws are just and the enforcement of laws is what gives businesses the freedom to succeed. And I appreciate the opportunity to speak today. Thank you. (Applause)

**MR. BARRERA:** Mr. Durek, I really appreciate your comments. Those

are the types of things that we need to hear. I'm glad also that we have some representatives from the Senator's office here. They'll be very helpful on these types of issues.

Those are the type of things that we want to hear and I will guarantee this, that we will send it to the EPA people in D.C. so someone else will listen to what's going on. And what's important -- what he's done is, he's done an unbelievable job of documenting.

When you find you work with the federal agencies, try to document it as best you can. And those types of issues -- is that when I come out here and I hear that, you don't realize -- that's why I'm glad some of these, federal agencies are here and they realize how this affects you personally.

It affects families, it affects how people can sleep at night. And that's why it's so important that we all hear this and that this is not just federal, it happens at state levels too. So I'm glad we have people from the state also here, because they're all very interested. Mr. Durek, we really appreciate you coming. We also have Richard Hardesty here today.

**MR. HARDESTY:** I represent the Procure Technical Assistance Centers in the state of Florida. I represent SCORE. I'm a SCORE counselor, a cyber counselor. I deal with people online as a Federal Contract Specialist.

I observed to Mr. Barrera in the hall, that next month I'll celebrate 50 years of doing business with the government, which makes me older than all of you.

My background is 25 years in the Air Force, which gave the perspective of getting my Bachelor's, Masters, and part of my doctoral degrees after I retired when I knew all the answers. I'd say it was a lot easier going through school.

But the thing I have done in the last 12 or 13 years is teaching small businesses how to do business with the federal government.

And Mr. Barrera asked me, what's the problem? The problem is exactly as the previous two speakers have said, the government regulations.

Government talks in very funny English speech when you talk about (inaudible) and so on, and they use a million acronyms that people do not have an understanding of.

And then we finally get to the piles and piles of paperwork that even after the Federal Acquisition Streamlining Act of 1994, when we did away with 225 laws, rewrote the entire body of federal contract law, we still have a pile of paper.

It still seems to be impossible to buy commodities or services without issuing a 100-page solicitation.

To that end, in the last 13 years, I think I made the comment I have serviced about 10,000 small businesses that have passed through our offices in Tampa.

Those small businesses, about 25 percent of which got government contracts. Approximately \$750 million have flowed into the Tampa area from federal contracts.

The things that happen that disturb me are things that I have sat in with many of my small businesses. I'm an advocate, especially of 8(a)s. I have one of my clients -- two of my clients here today.

They are both 8(a)s that are going to be testifying and trying to help them overcome some of the things they've run into.

For example, I'd say failure to negotiate in good faith when I've seen a client that sat in on a meeting. The client came in. They were having some problems with their contract. And they asked to settle on a global basis and made an offer of \$120,000 to complete the entire project.

And on the government side, they came back after several minutes of discussions and said, well, we figure that the value of that work is worth \$5,000, based on our empirical data, which is obviously from pre-depression times if they test their empirical data because it had nothing to do with reality or the current situation.

One that I really liked a lot was, a small business called me because they had received a threatening letter and received a marginal interim unsatisfactory report for evaluation. There was no citation in the letter and they asked me what to do about.

I said, it's simple, write back and say that there is no legal precedent in the Federal Acquisition Regulation, the Department of Defense Federal Acquisition Regulation, or even that agency's own regulations, of anything called an interim marginal unsatisfactory report.

And there has to be a legal basis. They just can't pull this thing out of here and say, here you are, and this is what you're charged with.

That same company had performed a federal contract for which they got a satisfactory performance evaluation. That performance evaluation was never entered into the Corps of Engineer C-CAS system out in Portland, Oregon.

They keep a record of all contracts that have been completed and you either have a satisfactory, marginal, or unsatisfactory or an outstanding rating.

By not entering that rating into the system, this company was effectively blackballed from other work because they would give the Corps of Engineer job as a reference.

When people would try to check it out with the Headquarters in Portland where the C-CAS information is kept, there's no record.

I even got involved in that and sent a copy of the satisfactory evaluation to Portland and to the Contracting Officer that had issued it, and to this day, and that's been over two years ago -- and as of today, that satisfactory rating has never been entered into the government system.

There's a failure on the part of the government many times in construction contracting. If there is a contracting officer technical representative or administrative contracting officer assigned to a contract, the contracting officer, him or herself, has to issue a letter delegating that portion of the authority to that KOTAR or ACO.

I've seen many times when that was not done or the person simply self-appointed themselves as an ACO. It's a clear violation of the law.

I sat in a meeting with another client and I always sort of cringe because he does a lot of what's called DO rated orders.

If you're familiar with federal contracting, there's such a thing called Defense Priorities and Allocation System regulation, which came into being as a result in the 1950 Wartime Production Act and it has to be renewed every five years.

President Clinton re-signed that bill on the 1st of January 1998, so it will come up again in another year.

But I sat in a meeting when the client brought up the fact that he was very concerned about the job because it was DO rated. It had priority, as being in the interest of the United States government.

And the contracting officer said, oh, there's no such thing as DPAS. They did away with that several years ago.

Well, the comment I made was, why did you put it on the face cover of your contract then because you show this as a DOC nine rated order. He said, oh, the reason it's there is because it's in our computer system, it's part of the boilerplate and we've just not ever gotten around to taking it out.

I sort of thought that at my advanced age, maybe I was having a senior moment. So the first thing I did when I got home that night was get on my computer, go to the Government Printing Office and look up DPAS. And sure enough that's when I found out that it had just been updated.

I brought my Management Contract Management magazine with me today because I just thought it's interesting that on the front cover there's a large article in the magazine this month discussing Defense Priorities and Allocation System regulation. This is now, how many years later -- six years later.

Lastly, there was one that I ran into that I really don't know how to cope with it. I can cope with people that disregard regulations -- no, I can't.

It was sort of like having a battle of wits with a person that doesn't really have any wits and I'd be playing on our (inaudible). (Laughter)

But it was -- the client came and installed a piece of equipment, a very expensive piece of equipment. They were told to disconnect several of the circuits in the equipment because the electricity being furnished to the building was not sufficient.

The contractor said, well, I can't do that because it voids the work (inaudible) and besides that, we're talking about a competent information center, which has five million dollars worth of computer equipment, and if you disconnect this de-humidifier in the re-heat, you're going to have spring showers in the summer time from the condensation.

Oh, well, that doesn't make any difference, we want it done. So he said, what do I do, what do I do? He had talked to the manufacturer and they said, you can't disconnect it, you void the warranty.

And I said, well, go back to the contracting officer because it was very clear in the specifications that these things were to be connected. The drawings did not show it but in federal law, specifications rule over drawings.

So I said, write a letter. So he wrote a letter and the answer was, we still deny your claim because we contacted the architect and they never intended for you to hook those things up.

I observed as how intent is not addressed any place in civil law or federal law. You can't say, we intend to do something. Only that which is in writing is enforceable.

This is why it really buffaloed because there was just no overcoming it. The people we were dealing with were absolutely obstinate. Refused to make the correction and again, intent. You say I'm almost at ten minutes. Mr. Gonzalez, Mr. Barrera, thank you for your time.

(Applause)

**MR. BARRERA:** Thank you. Bobby, I'm going to have you come up. I'm

going to have Bobby Clark here. He's out of Kentucky and actually can discuss -- Kentucky passed a state SBREFA law and he's got a couple of examples I want Bobby to share with us.

**MR. CLARK:** Thank you for the opportunity to speak today. I've got a few comments and then I did want to share some examples of small business troubles with federal agencies.

America's 25 billion small businesses are critical to our economic well being, to building America and helping the United States compete in the global marketplace.

Entrepreneurs create the new businesses and the new jobs that go with them. They bring new and innovative services and products to the marketplace and they also provide business opportunities to diverse and traditionally underrepresented groups.

Now looking at the size of the small business community just in region four, in region four there are approximately 1.1 million small businesses that have one employee up to 500 employees. In addition, there's an additional 1.7 million self-employed individuals in Region four.

Now these small businesses actually represent 99 percent of all employers, 51 percent of the private sector workforce, 75 percent of the new net jobs that are created each year, 51 percent of the private sector output, and 98 percent of all exported goods.

Federal, state, and local regulations impose numerous requirements and burdens on small business. It can range from simply obtaining a business license to very complex regulations dealing with chemicals in the workplace.

Now these burdens that are associated with these requirements are often exacerbated by substantial paperwork and record keeping requirements.

In addition to the cost and administrative burdens, small and growing businesses have difficulty simply keeping abreast of the various regulatory paperwork requirements.

Too often, federal agencies and small businesses are not working partnership to achieve important public policy goals and minimize costs and impact on affected industries.

Too often the enforcement and compliance activities have bewildered, frustrated and even angered small business owners as we've heard today.

Too often these agencies were at a loss of how they can achieve their regulatory mandate without resorting to punitive enforcement actions.

Now I want to tell you about a couple of examples that I've heard about in the last four or five years in these hearings across the country, or across Region 4.

One in Nashville was a small defense contractor who was audited by the Defense Contract Audit Agency. He built high performance aircraft for NASA in the Air Force.

In 1995, they audited his '95 and '96 books and he had a \$39,000 research and development expense, which generally under government accepted accounting practice, you spread that \$39,000 over a period of time. But the contract manual said, he had to expense it in one year.

So in turn what the Audit Agency did is that they assessed a penalty of \$166,000 for a \$39,000 error, which wasn't an error because the government said you're supposed to do it this way.

He had to hire a Washington attorney, who he could actually write off to the federal government under their overhead expense, so it ended up costing the government a whole lot more money.

Now another particular example that I found just outrageous dealt with the Federal Energy Regulatory Commission. And it was actually at the first hearing that I went to. I got involved in this in 1997.

I got down to the hearing and they said, oh, by the way, you're also Chairman of Region Four. And I didn't know what to expect but here's one of the problems we heard during that hearing.

This small business owner had annual revenues of approximately \$50,000. The Federal Energy Regulatory Commission or FERC inspected their dam. They had a small dam that allegedly had a serious hazardous condition existing near the dam.

FERC said that they had violated the regulations that are designed to prevent flooding, that can cause harm to people and property. So FERC assessed a \$225,000 fine.

So the only structure on the river for miles was an abandoned mobile home that once was inhabited by a squatter that had been gone for some time. In fact, the mobile home had actually burned down.

The small business owner tried to explain this to FERC but was stonewalled by FERC attorneys. The small business owner finally sued FERC in the Federal District Court in Washington, which ruled against FERC, saying that the fine was excessive.

So what did FERC do? They said, okay, we'll reduce the fine by five percent. An outrageous example.

Then the National Ombudsman finally got involved, contacted FERC. FERC then refused to cooperate, said, we're not covered by SBREFA, even though every federal agency that regulates small business is covered by SPREFA.

And after about six months, FERC finally decided to reduce the penalty to the amount they had already paid. But the reason they gave was, well, we were wrong. We really didn't regulate them anyway, instead of admitting their mistake.

A recent report from the United States Small Business Administration states, that in 2000, U.S. federal government regulations cost an estimated \$843 billion dollars, that's eight percent of gross domestic product.

The report said that considering all federal regulations, all business sectors, regulation costs from firms with fewer than 20 employees, actually pay approximately \$7,000 per employee, per year.

Now a large firm with 500 or more employees pays about \$4,500 per employee because they have a department with lawyers, engineers, and others to help them comply with the federal regulations. Small businesses can't afford it.

And that \$843 billion dollars does not even include state and local government regulations. Those costs are also very high.

Environmental regulations and paperwork burdens and tax compliance are particularly disproportionate to hitting small business.

That \$7,000 figure I mentioned a minute ago, actually environmental costs are estimated at \$3,328. Economic costs, these are constraints that are put on pricing or what products you can sell or buy, cost about \$1,600. And workplace requirements costs about \$829, and tax compliance \$1,200.

Now I'm in the publishing business so I don't have a lot of government regulations. So my regulatory cost per employee is virtually nil other than some paperwork that we have to do.

So that means that those costs as an average, some businesses may be paying \$10,000, \$15,000, \$20,000 per employee just to comply with federal regulations.

Now one of the problems that exists in Kentucky that I'd like to address at this point is that federal agencies often delegated their enforcement authority to the states or other intermediaries.

When they do that, we believe they should require that the minimum federal standards such as SBREFA rights, should also be included in that



arrangement. This includes all flow down, all federal small business protections, cooperative objectives that guarantees small business their rights without the use of costly judicial remedies.

Agencies should review and report on state government and other intermediaries, their compliance with all federal statutes.

Now this delegation enforcement responsibility may be efficient for government by reducing (inaudible) inspection. It's also good for small businesses because it reduces the layers of government.

But small businesses are concerned because federal agencies are not sufficiently policing the delegated powers to guarantee that state and local governments provide small businesses their regulatory fairness rights, including those that come directly from the Office of the National Ombudsman.

Now here's a Kentucky example. (Inaudible) Serena of Shelby Industries, in Shelbyville, Kentucky, addressed this lack of consistency with EPA regulations among federal, state, and local governments.

He said that when federal agencies delegate down to the states, due process rights should also flow down. Mr. Serena's concern was not being able to meet with local officials to discuss the violation because the right to meet was not included in the ordinance.

What it entailed was a water criteria that the EPA said, let's take the example of 2.0. I don't know the specifics. But if the state standard became 1 or 1.5, the local standard they wanted it to be was 1, doubling the amount of compliance that he had to go to.

But the local ordinance didn't even allow for him to appeal his fine. So he ended up spending about \$14,000, and finally convinced the state with the threat of a lawsuit, that they -- or the city, that they had to change.

And in fact later this year, they in fact passed the ordinance that he and his attorneys had drafted to make them more fair for small business.

We believe that agencies should review and reduce their small business data collection, their reporting requirements, and eliminate duplicate information that is being requested.

Agencies should periodically conduct field studies of the actual time small businesses spend complying with federal requirements.

One of the facts I didn't mention earlier was it's estimated that federal government paperwork requirements alone cost about \$100 billion dollars, billion dollars a year.

Now Keith Price with the same company named Shelbyville Industry, testified in Louisville a couple of years ago, and his testimony talked about the increase in paperwork burden resulting from these mandatory regulations, surveys, applications, and just an endless host of paperwork that he was being asked to comply with.

The data are requested by agencies but the business is never informed of the results of the compilation so they spend hours and hours completing these things and never hear back as to what the agency had done with them.

Mr. Price illustrated his views by listing a number of reports. In fact, his reports -- he stacked them about a foot and a half tall, that he had to complete for just seven federal agencies overseeing his business.

Although the information was similar, each agency form was different and required him to complete. What he also found out was that it took him about 51 hours to complete all of those forms. So these are just a few examples.

I know Thelma's here from Chicago and I think (inaudible) is going to share an example. Thelma may have something also to add to this, but I think it's important for the federal agencies here, and other small business owners, and state agency advocates to understand the breath of the issues facing small businesses. Thank you.

(Applause)

**MR. BARRERA:** I think we have our Power Point ready so we're going to do that. And then we're going to ask Joe Lopez to speak and possibly any other people around here who may have some issues with some of the federal agencies.

The (inaudible) from the federal agencies themselves and they can kind of explain what they're doing to help small businesses in complying.

(Power Point Presentation)

**MR. BARRERA:** Well, we know who that is. But I think the National Ombudsman's Office, SBREFA -- and we've been saying that word.

I don't think we ever really said what it means. SBREFA is the Small Business Regulatory Enforcement and Fairness Act that was passed by Congress in '96, with a specific mandate to help small businesses in dealing with the federal government and the federal government agencies who are being overreaching in trying to enforce their regulations.

We thought it was important to actually put the definition of what an Ombudsman is. An Ombudsman is one that investigates assorted complaints, reports the findings to help achieve equitable settlements on behalf of the small businesses. That's what Ombudsmen do in general.

Our mission is to foster a more small business friendly regulatory federal enforcement environment. And that's a really good thing we want to point out. That we're trying to change the environment of the federal agencies.

We heard an example, Mr. Durek. And we're trying to change that environment where federal agencies don't treat small businesses like that.

And it starts out in Washington. It has to. Everything flows down from the top. And if we get the agencies in Washington to recognize that this goes on, if they can pass that down to their agent, we can make a big change here.

And we are started to change it but it's so important that they hear the stories. It's unfortunate but still important that we hear stories like Mr. Durek's so that they know, it's not done yet. We still have a lot of work to do.

And one of our missions is to have Roundtables and Regulatory Hearings like this across the country. I've posted my schedule. If you go to our website and we'll be announcing that here in a second, we've got about 21 Regulatory Hearings scheduled just through September.

We're trying to get to at least -- the federal government is broken up like ten regions, and particularly this region, and we're trying to go and at least do two in each region through this year and possibly more.

But it's important for us to go and hear from a bunch of small businesses to find out what's going on. And we find there are some similarities throughout the country about some of the things going on.

So if we hear that and we know about that, we can talk to the federal agencies. And in fact, I'm having a meeting in two weeks with all the federal agencies, regulatory agencies in Washington D.C.

And we're going to kind of let them know now, these are the things that we're hearing, and specifically I'm going to bring up your story, Mr. Durek.

We try to act as liaison again between small business and the federal agencies with regulatory authority.

This is important. What we do with the comments like here, is that there's a comment form we have out there. It's important that we fill this out. We send that comment form with substantiating evidence to the federal representatives in Washington D.C., so that they know about it.

And we ask them to provide us a response within 30 to 60 days. And we actually grade them on that. We grade them on how fast they respond to us. So that's a real important thing for everyone to know.

This is important, how can we help you? There are three basic requirements in order for us to help a small business, at least in my office.

You've got to be a small business, a small business entity. That's means, small government entity is \$50,000 and under. We help the small municipalities that are having problems with a federal agency, or a non-profit organization. And that's primarily going to be the one with a business organization.

Your comment is directly related to a federal agency with regulatory authority over a small business. In other words, we'd have no jurisdiction over a state agency. That's why it's important we have a state Ombudsman like Ms. Bishop in your state.

Those things are really important so you can direct some comments to them and they help you with your state agencies or have similar SBREFA legislation like Kentucky, where they can also help with your state agencies because regulatory authority doesn't stop at the federal level. It goes down to the state and local.

And the third requirement, there has to be a compliance or enforcement action that has been taken by a federal agency or an enforcement action is imminent against a small business, like a fine or they retaliate against you for not performing something that they like. Different stories like Mr. Durek's.

Again, jurisdiction, it has to be a federal regulatory compliance and enforcement action. Again, we heard some good stories about contracting, but my office has no jurisdiction to possibly help you in your contracting actions unless you feel that a federal agency is specifically denying you a contract as part of a retaliatory action.

Here's what we do when we have a comment. We receive, substantiate and present the small business comments to the federal agencies. In other words, when you send the comment, we're going to have to have substantiating evidence.

As an Ombudsman, we have to act somewhat as a neutral party so we want to be sure that you have some evidence to back up what you're saying. We're going to need that and the federal agency is going to want that.

We coordinate the activities of ten Regulatory Fairness Boards. We encourage the federal regulatory agencies to improve the compliance environment and that's really, really important.

And we actually -- again we rate the agency and then we report to Congress. We basically do a report card on the federal agencies on how they're treating small business enforcement actions.

We evaluate them and we send the report card to Congress and actually we give testimony before the Small Business Committee, before the House and Senate.

And believe me and I think some of the agencies will tell you, they don't want to be called before those agencies, and they don't want to be called before those Congressional Committees. So that is our leverage. Our leverage, if we get substantiating comments, we can actually send this testimony to the Hill.

This is important. And Mr. Durek made a good point and we had some other good points. A lot of people are afraid to tell us what's going on. And they're afraid because they're afraid of retaliation by that federal agency.

So we can help you with that. You can send a comment in and you can tell us that you want to keep it confidential and we will not tell the federal -- we'll report the action and we'll mark out -- we'll black out your name and any reference to you when we send that to the federal agency so they know kind of what's going on.

But I will tell you this. Again, we'll keep it solely confidential, but it's more difficult for the federal agency to maybe address that particular problem if they don't know where it's coming from. But we will talk to you about that. If you want it to be confidential we will comply with your request.

This is really important. You should always continue to pursue all your legal options, which you believe is in the best interest of your small business. In other words, we're not your attorneys. We cannot be a legal advocate for you. You should not stop looking for an attorney if you need one.

Our actions do not stay an action or we don't necessarily stop an action. What we do is, we report what's going on and we leave that up to the agency as far as what they're going to about that. But it's really, really important, we're not your attorney's.

Here again, I just pointed out, we cannot change, stop or delay a federal agency's course of action, nor assist comments of a non-federal regulatory nature.

Again, we do not help you secure government contracts. That's another department within the SBA. And we do not assist with government loan processing or approval. That's again, another department at the SBA.

Here's our telephone number if you want to call us. It's 1-888-REGFAIR. There's a fax number there. Our e-mail is [ombudsman@sba.gov](mailto:ombudsman@sba.gov). And our website, which we've redesigned.

I think Bobby and Livy, and Thelma, will tell you this, is that we tried to make our website a little more business friendly where you can get to it and navigate it through quick.

Because we know -- as a small businessman myself, I hated going through website. I hated just sitting there figuring out where do I go next. We try to make it easy to connect or you might want to get information that you need. And the SBA website also has a lot of great information about some of their other programs.

And we're actually trying to get some of the state agencies to start maybe having some links to us. And we know that we're working on Kentucky's state agency to link with us. Just talked to the State Ombudsman here (inaudible) to maybe have them link to our website also.

So that's kind of basically of what we do in a little five-minute presentation. I hope that's helpful.

And I want to bring Mr. Lopez up to give some testimony. Actually we have high tech from a testifier. He's going to hook up a little program so we can kind of see what he's going through.

**MR. LOPEZ:** I'm testifying for company called Nikon Incorporated. We're out of Tampa, Florida. My complaint basically today or my issues, although they seem like they're isolated to one district, which is the U.S. Army Corps of Engineers, Mobile District (Inaudible), it's really about small business in general.

I feel like a lot of things have been said today, retaliation from different offices and stuff like that. As you can see right now, it doesn't really matter what I say, because my business is out of business anyway so it doesn't matter. They can't do anything else to hurt my business.

But anyway, my background in Nikon -- just to give you a real brief background on my company, we started in 1985. We were primarily a HVAC, plumbing installation company.

In 1992, we implemented growth, which is diversify and expand our geographic boundary. By 1998, we had grown to approximately \$20 million in sales. We had a \$10 million bonding line, a \$1 million line of credit. We had approximately 130 employees, which were -- they engaged in all types of different trades, all types of construction trades that is.

We had a mix of non-government and government contracts. This took place after 1992, because one of the reasons that we were going to expand geographically and diversify was to get into the government market sector, whereas before we were in the installation business primarily as a subcontractor.

So we had contracts with multiple agencies in the whole entire southeast, Corps of Engineers, Robbins Air Force Base, with the Savannah District, Mobile, Alabama District.

We had different contracts throughout the state of Florida under the Mobile District. We had a contract that we performed with the VA Hospital, McNeil Air Force Base directly, so we had a lot of different contract opportunities that we were blessed with under the SBA program.

I want to tell you, I feel very strongly like everybody here, that small business is important to this country. It's unbelievable, and the SBA 8(a) Program is extremely, extremely successful.

My complaint today is not so much about regulatory compliance and how it has impacted the small business, but how small business is impacted by agencies non-compliance.

Because even though we had to comply because we have so many other issues that we have to worry about, it's about the non-compliance of the government agencies.

So with that, I don't want to sound like I'm picking on one District office, but it's just -- we've been successful in a lot of other contracting opportunities in other offices, so it's kind of isolated to the U.S. Corps of Engineers Mobile District Office.

But some of the compliance issues or non-compliance activities, I'll go ahead and address right now. As you can see, disregard for the Federal Acquisition Regulations was one of them. Disregard for OSHA and EPA regulations.

Army Corps of Engineers disregarded the compliance in their own regulations, and the impact that it had, the unfair treatment on my small business, but I think I'm here speaking on a lot of small businesses that are probably afraid to get up here and do that because of retaliation of the agency.

I know it's much deeper than just my company, but I know what I'm about to tell you here is, just real quickly -- is that there's more than one of me out there and it's affecting small business, which is affecting our overall economy.

And I think that's what you're here to report back to your Congress or whatever representatives that you have to report to.

In regard to disregard of (inaudible), I have a lot of documentation that I could give you, but it would probably -- you (inaudible). But anyway, I'm just going to go ahead and cite the issues and then whatever documentation you need, whatever they would need, I would be able to give it to them.

In regard to partnering, it seems like they want to use the partnering whenever it's convenient to them. As Dick mentioned to you earlier, I had a lot of situations where they failed to negotiate in good faith.

The failure to appoint when they change authority, which is important because you never know who you're writing to or hearing from, from one day to the other. They don't designate a specific that you're supposed to follow up in the chain of command. It makes it very confusing.

They threatened to issue unsatisfactory performance ratings, which don't even exist. They failed to enter (inaudible) when you do perform well. It's just an attempt to harm obviously. They fail to acknowledge multiple items.

The contracting officers sometimes just perform like an ostrich and just sticks his head in the sand. Whenever you're writing very important letters, not to be a troublemaker because you're trying to resolve issues and you're (inaudible) for someone, you know, hey, we want to resolve these issues. So it just, you know, it doesn't go anywhere whenever -- they just ignore you.

Disregard for OSHA and EPA regulations. We had a situation where they attempted to manipulate OSHA definitions to their advantage and it failed. I provided you guys with those particular letters. It's just three letters to document that particular incident.

We had a contracting officer's technical representative admit to us that he's never had to comply with these particular specific standards for 17 years.

They have disregard for EPA standards, ignored hazardous waste issues. And then they had cosmetic safety programs where they try to award people for being safe, which is totally contradictory to their actions.

I agreed with the partnering concept. I think we do need to make the federal contracting and contracting entities a friendly relationship, but obviously whenever someone brings personality into it, it gets to be very ugly.

And I already testified here earlier, but we had situations where they had failed to conduct partnering meetings and they failed to acknowledge the spirit partnering.

The failure to provide meaningful responses. They disallowed communication with (inaudible) entities that are directly impacted by what you're performing.

We had experienced abuse of power. Abuse of unilateral



modifications, which breaks the spirit because that goes right into failing to negotiate in good faith and just saying, here you're going to do this, we're going to direct you to do this whether you like it or not, just (inaudible) it around.

They threatened to (inaudible) me over safety issues. They force District managed businesses to turn their backs to OSHA whenever it's convenient to them.

They force small businesses to litigate. They initiate criminal investigations frivolously. They cancel contracts due to safety issues because they knew that they could partner and deal with the situation on two particular occasions.

They disregarded to comply with their own regulations, which they tried to assert that well, even though the contract said this, we never intended to do that, we intended to do something different. Although all of the documentation says to do this, we never intended to do that, do ignore it. Anything to tell the record (inaudible), which was mentioned earlier.

The (inaudible) bulletin 1120, which is by their own makings. They ignored agency management plans, which they helped build for the agencies.

So there's a lot of issues and I could probably go on for hours. I can definitely substantiate every one of these particular assertions that I have made.

But the impact of the particular treatment that I experienced is that -- and I shared -- we went from 1992 to '98, we were very successful, we had 130 employees with insurance benefits, of helping to work for a livelihood. We were on our way to employing even more people.

It basically broke this particular small business. It put 130 workers to unemployment, not to mention how many other employees I possibly could be working right now.

We have exhausted a large amount of surplus dollars on frivolous investigations by the Corps and that's our government dollars. Part of the spending that you guys wanted documented, that just seems to be a waste and the costs for unnecessary litigation.

And I want to tell you, all of this could have been avoided because we made several dozen attempts. So it's definitely about personality and lack of compliance by regulatory agencies.

So if I have the opportunity to, or if anything is ever needed for anyone to investigate this any further, I'd be more than happy to substantiate everything that I have here in addition to what I've already given you. Thank you for your time.

(Applause)

**MR. BARRERA:** I do want to clarify something. You know, we talked about -- that my particular department, you know, we don't necessarily help small businesses get contracts.

But in this particular situation where a federal agency has threatened canceling a contract because they were trying to retaliate against you, that's more in line what we can help you with. So we do appreciate that.

Also I want to bring up -- one thing that these hearings are for is that sometimes we find that small businesses cannot make it. So we (inaudible) and they send their comments to us, for us to present here to you all. And we have some comments from a small businessperson here in Florida, a boating company. And I'd like Livia to present to you all.

**MS. LIVIA:** Hi. This comment or notification to us goes back to the middle of 2000, and we received this. And in the change of the Administration and whatever, we just really got around to it recently.

And we've affectionately referred to these people as the boat people it seems, as far as their case is. They own a company called Oil Field Boat Side Services. Do you want me to just synopsis it or just read the letter?

**MR. BARRERA:** Whatever you feel comfortable with.

**MS. LIVIA:** The letter they sent is very short so I'll just go ahead and read it to you. The gentleman writes to us, "The attached letter was filed as a formal complaint with the Ombudsman for the U.S. Coast Guard in March of this year. There is no number given for a Board Chairman of the local office so I'm writing this letter to the Board.

Our investor would like to at least have acknowledgement that the complaint has been filed and is being acted upon". He is actually following up on a complaint sent earlier by his investor, and that's a long letter I won't read, I'll just tell you the content of it. "I've just received a copy of the letter and I have to admit it is factual. We've recently had our operation in Miami go bankrupt. I've been notified that they have not paid the inspection fees for two years.

This is primarily because everyone thought someone would look at the fee and provide some guidance. Instead we're being charged \$1,200 per boat, for 31-foot boats, while 300-passenger dinner boats are being charged \$300. This along with many other things in the letter do not make sense.

Now we can show you where other companies change oil, haul barrels on their deck, and they're not even being inspected. I will be most happy to

provide any back up information required and would like an opportunity to at least have our side of the case heard.

We have two boats that were built prior to these rules being initiated and unlike the rest of the country that has been given the time to bring the boats into compliance, we've had (inaudible).

This means that the loans, insurance and dock fees have to continue with no (inaudible)."

And the gentleman is a Mr. Ludler and they are out of Fort Lauderdale. Unfortunately they couldn't be here today.

Basically this comment -- and he just did a follow up letter, which I'm going to read to you. But apparently these people are in the business of waste oil and waste when it comes to passenger boats, luxury boats, et cetera, on transferring from the vessels that hold that, into their vessels and disposing of them properly.

And the issue is -- I mean, I'm not that familiar with the details, I think we're following up on them -- is that apparently legislation or regulation has changed to where his small boats are impacted significantly because he's had a (inaudible) designed, which is novel to the industry apparently.

So he sends this follow up letter. Current conversation, "I'm sending this correspondence. It has been nearly three years since the imposition of regulation via MSO Miami and MSO New Orleans on our service vessels". I have no idea what MSO is.

"As you know from previous correspondence, due to the structure of these requirements, we must not only operate to a standard, but our vessels must be constructed to a standard as well. Construction costs to our vessels are approximately \$200,000 in order to meet imposed standards, versus \$25,000 to \$30,000 for our competitors.

The issue is and will continue to be that we are the only vessel owners/operators in U.S. waters held accountable to these standards. Our growth into new markets has been seriously impeded by lack of standards for other vessels, owners and operators providing like services, (inaudible) waste oil removal and disposal, oil and water removal and disposal of waste fuel and fuel removal.

It was our intention by investing in R&D to provide safe, effective service while providing a mechanism for accountability of collected waste from recreational vessels, (inaudible) commercial (inaudible) we serve.

Prior to our existence, there was no accountability for the waste disposal unless the waste was collected in a regulated facility and even then, (inaudible) of great accountability inclusive of the generator of

individual vessels.

We truly believe this would be seen by the Coast Guard and the regulatory community as a whole, as being a long overdue and welcome improvement. Needless to say, we've been singled out for regulation and our business competitors continue to be exempted from the same requirements.

We see ourselves as being penalized for trying to bring about positive, constructive, and environmentally responsible change.

The specific restricted issues are the vessel construction system requirements. Competitive service companies operate (inaudible) with above deck storage, 55 gallon drum above the pump hose connections, no fire protection system, no published procedures or oil (inaudible) plan, no specific personnel requirements in numbers or training, gasoline powered, outboard driven vessels with open flame (inaudible) on deck for cleaning et cetera.

You have copies of our construction and our operational criteria. Apparently the Office of the Maritime and International Law agree with the opinion of MSO (inaudible) and New Orleans and support the drafting of regulation of all small craft service vessels provide vessel to vessel transfer.

We still await action by your office to bring about standards that promote responsible and environmentally correct operations for the industry as a whole and not one specific company."

This is a classic example of how either regimented assessment of either fines or penalties whether they're punitive or not, or just regular licensing fees to constrict the (inaudible) and affect the small business in a negative way when whatever they're performing, or the infraction that they have committed or the violation, when it in itself was benign in nature. When it has no impact one way or the other. And this is the kind of comments we're looking for as a Board.

**MR. BARRERA:** Just to follow up Livia. Livia was really good about getting (inaudible). We saw the comment a couple of years ago and I think with the transfer of the Ombudsman, we didn't get to it.

But Livia stayed on it and she got it to us and we've been talking with the gentleman. What's real important as she points out, is that sometimes when regulations are passed, they're not necessarily always taking small businesses into consideration -- is that how much more they have to pay to do things.

We talked about how the federal regulations cost small businesses approximately \$7,000 a year and large corporation \$4,500. The reason is

that small businesses can't spread that cost. They don't have the different lawyers to be constantly looking at this.

You have a small business (inaudible) all the different federal agencies about different regulations from (inaudible) and they don't know what they don't know. And it's real important that we get out there and let them know there's help out here.

And that's why it's important for business to realize, there is help at the state level. There's Small Business Development Centers, which under Kaaren's authority, they actually offer compliance systems and so it's important to take advantage of these things, to know that there is help out there.

The IRS now has an actual disc that helps small businesses to come to compliance because we all know -- what's that old commercial, you can pay me now or pay me later.

And it's important to small business people that we go out there and try to find out what's out there to help us so we can avoid some of these problems later.

We have Tom Hicks with the Department of Labor. They're doing a lot of changes that actually help small businesses to come into compliance. They're giving seminars and Florida's one of the first places they've started. Is that correct, Tom?

And so they recognize that they've got a good partnership with Florida. The Administration and (inaudible). I know it's real important to the Governor, and it's important to the President, and Administrator Barreto.

We try to help small business as much as we can before hand. So it's real important that in working with the agency, that we try to really educate them that, let's don't go right to the penalty stage. Let's don't go right to the, let's get them in trouble stage.

Let's try to help them first because if you think about, it saves the federal government money. If we're going to go -- if we take an attitude, well, we're going to fine you, it's going to lead to litigation and that takes time for federal employees to stop doing their job. So it's important that we try to change the environment.

But I do appreciate everybody coming down. I want to know if there's anyone else that wants to testify about any federal agency problems about the federal regulatory enforcement policies. Any other testimony?

Do any of the agencies want to make some comments? Tom -- about some of the things that you maybe have going on to help small businesses?

**MR. HICKS:** (Off mike). Sure. My name is Tom Hicks. I'm from the Office of Small Business Programs and one of my -- the office that I work for (inaudible) and one of the things that we're doing that Mike was talking about is we're doing a partnership with the small businesses across the country.

We're bringing out federal agents within the Department of Labor -- I don't know if you're aware of it but the Department of Labor has several agencies that are responsible for enforcing regulations, OSHA, Wage and Hour, (inaudible), EPA which is still (inaudible).

And what it is that we're trying to do is help the small businesses comply with all the regulations (inaudible).

And what we're doing is we're just going around to the workplaces and giving a 30-minute overview of the rules and regulations that affect the small business.

**MR. BARRERA:** Thank you Tom. And it's real important that one of the goals that we've got started -- that we want to again, reach out to these people and let them know that, you know, we are going to go out there and help the small businesses as much as possible.

And the Department of Labor has been very helpful. In fact we had an issue that we had in Indianapolis where a gentleman -- and he was having difficulty -- he had a small brewer restaurant, and there was a dispute whether his brewers were exempt or non-exempt employees for wage and hour issues.

He sent us a comment. We got it to Tom's office and they worked with the local agencies, and that got resolved in the small businesses favor.

So some of the things we do, we have had some good wins here. So it's important to take advantage of the Ombudsman's position, both nationally and statewide too, because they have a lot of -- they have regulations. With the state agencies here, it's important to take advantage of that.

Mr. -- also have Mr. Ricotto from the IRS. Do you want to make a couple of comments?

**MR. RICOTTO:** My name's Craig Ricotto. I'm with the Internal Revenue Service, Tax Education Communication area. We just came into existence in January of 2001.

It's our job to identify issue problems of small businesses with regards to federal tax laws. They're willing to do something about it. That's what we've been charged with doing.

What we have done is set up a series of small business tax workshops

among other things, throughout the Northern Central part of Florida. And we've set up about 60 of these throughout the year 2002.

So it's kind of an ambitious undertaking and each one of these is about five or six hours long. We talk about things like business structure, what are deductibles, payroll taxes, what kind of records you need to keep and that kind of thing.

And we're trying to partner with the Small Business Development Centers. And they have a small business organization that we can successfully partner with and get the word out on these.

We think it will be a great benefit to small business owners, particularly those who are just starting out their business, in complying with and understanding the federal tax laws. The schedule for these is available at our website at [irs.gov](http://irs.gov).

**MR. BARRERA:** Thank you. Do we have Annette Hill for the EPA here?

**MS. HILL:** Yes.

**MR. BARRERA:** Okay, Annette.

**MS. HILL:** Hi, I'm Annette Hill from the EPA Region Four in Atlanta. And most of our small business activities are actually run out of Headquarters (inaudible) is actually in D.C. (Inaudible).

**MR. BARRERA:** That will conclude -- oh Thelma.

**SPEAKER:** Yes I just wanted to say to the gentleman in the back, all the federal regulatory agencies are supposed to put on the front of their (inaudible) that they send you, no action necessary.

I don't know if you know that Mike, but that's supposed to be done and I don't think that has been happening. (Inaudible). We just need more money.

**MR. BARRERA:** We always need more money and in fact, that's a good interesting thing when we talk about small businesses and how important they are.

I don't know if you knew this, that two of our clients -- we have an all-star client. A former client, Ed Cal, was a former client of the SBA. And the main reason I'm mentioning Cal is that because the taxes they pay would support the whole budget of the SBA. So we need some more of you Ed Cal's out there so I can get raise. (Laughter) So we can go forward on that.

And I do have some good news -- is that, you know, we have Regulatory Fairness Board members. And we have not had one in Florida, and at the

request of Governor Bush, we're going to get a Regulatory Fairness Board member from Florida.

We're all working on that and that should happen here fairly soon. So what's good about that, you'll have one person. And in case you can't get a hold of us, you'll have this person who you can contact about your Small Business Regulatory Enforcement Act Fairness issues. And we do look forward to having that in place.

So without further ado, does anyone have any other comments you want to make? Yes, sir?

**SPEAKER:** (Inaudible) public federal agencies and I'm with OSHA out of Tampa.

**MR. BARRERA:** Oh, okay.

**SPEAKER:** So just to let you know about a couple things going on. One, about a year and a half, two years ago, OSHA as an agency created a new position called (Inaudible) Specialist and Joan Spenser is the CAS in our office, and it's strictly for to find assistance, and plus they do enforcing.

In fact, I'm not even allowed to interact on enforcing. And she's there to help folks, including small businesses. For instance, she's participating on the seminar this afternoon (inaudible).

Also there's a consultation program, a 21-D Program that is primarily funded by federal OSHA (inaudible) by the states. And in Florida, that's headed by the University of South Florida, Department of Public Health.

They're there to help (inaudible) particularly (inaudible) show on your doorstep and once we do, we're in an enforcement mode, call the consultation program to come out and help you just to make sure you are in compliance. So if we do show up, you can (inaudible). Just a couple things that we're doing.

**MR. BARRERA:** I appreciate it. And again, just to mention one other thing and then I'll let you all go. It's all important to you to be (inaudible) of your Senators and Congressman because they can be very, very helpful at times, particularly in a situation where you may not want to let us know who you are, you may be afraid.

Use them, they can contact us directly and we've had situations where Senators have contacted us, Congressman has contacted us on behalf of their constituents and we listen to them. So definitely use them and we can work with them also.

Use the Governor's office. There's Dana, did you want to say a couple of things.



**DR. DANA:** I do want to say something. First of all, thank you to the business leaders and also to the agency reps that have taken time from your busy schedules to come here today.

I also want to offer a great thing to SBA and for you to bring back to your Administrator, the thanks of the Bush Administration, Jeb Bush Administration, for all that you have done for Florida.

I can say in the last year, but I'm going to go with the last six months, SBA has helped us on three very critical issues in Florida, 9-11, the drought issue (inaudible) and then most recently the (inaudible).

They came in, they brought in the best of their best to help us set up workshops and work with small business owners so they could figure out how to apply for a loan. They expedited the application.

The Administrator came down here and awarded some (inaudible). I just want (inaudible) great things. Your administration and you clearly want to do the right thing and Florida recognizes it.

**MR. BARRERA:** Thank you. Well, we appreciate everybody coming down. I hope you stick around for lunch. I know that will be pretty good. And to register for the Department of Labor and it will be more of an informal type thing (inaudible). Be sure and stick around. We appreciate everybody coming. Thank you. (Applause)

(Whereupon, the foregoing proceeding concluded)